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NTSB Order No. EA-4091

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of February, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-12189
)	
WILLIAM J. O'CONNELL,)	
aka William J. Marsio,)	
)	
Respondent.)	
)	
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Petition of)	
)	
WILLIAM J. O'CONNELL)	
aka William J. Marsio)	
)	
for review of the denial by the)	Docket CD-23
Administrator of the Federal)	
Aviation Administration of the)	
issuance of a commercial pilot)	
certificate.)	
)	
)	

OPINION AND ORDER

Respondent has appealed from the law judges' decisions in these two separate cases.¹ For the reasons that follow,

¹ Attached are an excerpt from the hearing transcript in SE-12189 containing the oral initial decision in that case, and copies of the written decisional orders issued by the law judge

respondent's appeals are denied and the law judges' decisions are affirmed.

In SE-12189 (hereinafter the "revocation action"), Administrative Law Judge William R. Mullins affirmed, on June 24, 1992, after an evidentiary hearing, an order of the Administrator revoking respondent's flight engineer certificate "and any other airman pilot certificate"² held by respondent, based on his intentional falsification of four applications for a flight engineer certificate in violation of 14 C.F.R. 63.20(a)(1).³ In CD-23 (hereinafter the "denial action"), Administrative Law Judge Patrick G. Geraghty upheld, in "Decisional Orders" dated September 3, 1992, and September 22, 1992, the Administrator's refusal to "reissue" to respondent a commercial pilot certificate
(..continued)
in CD-23.

² Counsel for the Administrator indicated at the revocation hearing that another action was pending with regard to respondent's purported entitlement to a commercial pilot certificate, and the revocation order sought only to revoke respondent's flight engineer certificate. (Tr. 10-11.) However, the law judge noted that the order requested -- and Board precedent would support -- revocation of all of respondent's certificates based on the alleged falsifications. (Tr. 13, 16-17.) Accordingly, after upholding the falsification charges alleged in the complaint, the law judge ordered revocation of all airman certificates held by respondent (i.e., the flight engineer certificate and the commercial pilot certificate). (Tr. 112.)

³ **§ 63.20 Applications, certificates, logbooks, reports, and records; falsification, reproduction, or alteration.**

(a) No person may make or cause to be made --

(1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part [pertaining to non-pilot crewmembers];

* * *

during the pendency of his appeal of the revocation action.⁴ In that case, Judge Geraghty granted the Administrator's motion for summary judgment, which was based on supporting affidavits (unrebutted by respondent) showing that respondent was not entitled to "reissuance" of his purported commercial pilot certificate because, although the FAA had erroneously issued to respondent duplicates of a valid commercial pilot certificate belonging to respondent's father, respondent himself had never qualified for or been validly issued any pilot certificate in his own right.

Crucial to both cases is an understanding of how respondent acquired the commercial pilot certificate. On May 12, 1981, respondent (whose name was then William James Marsio) wrote to the Airman Certification Branch in Oklahoma City, requesting "reissuance of my pilots license." (Exhibit C-1, p. 9.) Other than respondent's name and address, the letter provided no identifying information, such as a certificate number or social security number. Apparently due to the fact that FAA certification records at that time showed only one airman named "Marsio" (respondent's father, James William Marsio), the FAA

⁴ In the denial action, respondent also challenged the FAA's alleged refusal to reissue him a flight engineer certificate during the pendency of his appeal of the revocation action. However, the FAA made clear in its pleadings in that case that it did not object to doing so, and respondent's failure to receive it was simply due to confusion over his current mailing address. Although it is not entirely clear from the record in the denial action whether respondent ever did receive the reissued flight engineer certificate, our disposition of the revocation action (upholding revocation of that certificate) renders the question moot.

issued to respondent a duplicate of his father's commercial pilot certificate (# 354689). This is the earliest record the FAA has of "issuing" respondent a pilot certificate. Although respondent claims that in 1973 the FAA had converted his Israeli pilot certificate to a valid U.S. commercial pilot certificate, the FAA, upon diligent search of its airman records and inquiry to civil aviation authorities in Israel, found no evidence that respondent was ever issued a pilot certificate of any sort by Israel or by the United States.⁵ (See exhibits attached to the Administrator's motion for summary judgment in the denial action.)⁶

In February 1988, respondent again wrote to the Airman Certification Branch requesting "reissuance" of his pilot certificate, referencing his (actually his father's) certificate number. (Exhibit C-1, p. 8.) This time, upon receipt of a duplicate of his father's certificate, respondent wrote back to the Airman Certification Branch stating, "[a]pparently you have confused my father's certificate and information with mine." Respondent requested another reissuance of the certificate, and set forth two lists labeled "My Father's Information," and "My Personal Information," which included relevant information such as date of birth, and physical descriptions. (Id. at p. 6.) Significantly, he made no mention of social security numbers, and

⁵ FAA records indicate, and respondent concedes, that he failed the FAA's private pilot's examination in 1973.

⁶ We note that Judge Mullins rejected respondent's explanation of events, in its entirety, as "just BS." (Tr. 112.)

listed his certificate number as #354689⁷ while listing his father's certificate number as "unknown." After issuance of a revised certificate, in April 1988, respondent sought an additional "correction" to the name (apparently the name still read James William Marsio rather than William James Marsio). (Id. at p. 5.)⁸

Thus, by 1988, respondent had managed to obtain from the FAA a commercial pilot certificate bearing his name, address, and physical description, but his father's social security number and certificate number.

We turn first to the revocation action. That case was based on respondent's use of an incorrect social security number (his father's) on four applications for a flight engineer certificate. Respondent conceded that he used the incorrect number after learning that his prospective employer (Eastern Airlines) required the social security number on his flight engineer certificate to match the one shown on his pilot certificate (i.e., the duplicate of his father's certificate which the FAA had earlier issued to respondent). Indeed, respondent indicated that the FAA refused to allow him even to take the flight engineer exam unless the social security number

⁷ Next to this certificate number respondent had handwritten "I believe this is the correct number." At the hearing in the revocation action, respondent stipulated that it was actually the number of the pilot certificate which was issued to his father in 1945.

⁸ In 1989, after respondent had his name legally changed to William James O'Connell, he requested another reissuance of his pilot certificate to reflect his new name. (Id. at p. 2.)

on his application agreed with the one shown on his pilot certificate. (Tr. 94-5.)

In his appeal brief, respondent lists, but does not meaningfully discuss, numerous issues which he asserts warrant reversal of the law judge's initial decision. In our judgment, the only issue which warrants serious attention on appeal is respondent's contention that his false statements were not material.⁹ Respondent does not contest the other elements of intentional falsification.¹⁰

Kermece Willson, a specialist from the FAA's Airman Certification Branch, testified that an airman's social security number serves as a "unique identifier" which helps the FAA match a particular airman's records with the rest of his airman certification records. (Tr. 31.) She testified that if respondent had used his own social security number on his applications, rather than his father's, the FAA would have discovered that he had no existing airman certification record and would have returned the applications to the appropriate FAA inspector with instructions to seek clarification from the airman as to his correct social security number. Ms. Willson indicated

⁹ We have considered, and rejected as meritless, all of respondent's remaining contentions. We note that, in his reply brief, the Administrator provided a detailed and convincing reply to each of respondent's "issues," including those not specifically addressed in this opinion and order.

¹⁰ The elements of intentional falsification are 1) a false statement, 2) in reference to a material fact, 3) made with knowledge of its falsity. Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976).

that respondent's use of his own social security number on his flight engineer applications would have led the FAA to discover that he had erroneously been issued his father's commercial pilot certificate. (Tr. 33-4, 46.)

It should be noted at this point that, even though respondent indicated on his flight engineer applications that he held a commercial pilot certificate, a pilot certificate is not a prerequisite for a flight engineer certificate.¹¹ See 14 C.F.R. 63.31.¹² Accordingly, the FAA's position that the lack of an existing airman certification record for respondent would have raised a red flag and caused it to discover its earlier mistake, must be based on the fact that the lack of a record would be inconsistent with respondent's statement on the application that he held a commercial pilot certificate, not that it would show him to be unqualified for the certificate he sought.

A statement is material if it has "a natural tendency to influence, or [is] capable of influencing, a decision of the agency in making a required determination." Twomey v. NTSB, 821

¹¹ We note that the law judge apparently mistakenly believed that a pilot certificate is a prerequisite for a flight engineer certificate. He stated that respondent's falsification was material "because it resulted in the result you wanted, which . . . you wouldn't have gotten if you had put your Social Security number on there instead of your father's, because you knew . . . that you didn't have the requisite pilot certificates." (Tr. 111.)

¹² However, possession of a commercial pilot certificate, along with five hours of flight training in the duties of a flight engineer, is one way to meet the aeronautical experience requirements for a flight engineer certificate. 14 C.F.R. 63.37(b)(4).

F.2d 63, 66 (1st Cir. 1987) (false backdating of application for medical certification held material because it could influence FAA's determination as to whether pilot was qualified to fly as pilot in command during interim). We indicated in Administrator v. Cassis, 4 NTSB 555 (1982), aff'd. Cassis v. FAA, 737 F.2d 545 (6th Cir. 1984) that our findings of materiality are not limited to circumstances where the false entries are necessary to obtain the certificate being sought. In Cassis, a pilot submitted to the FAA a logbook containing false flight time entries, but he had enough flight time without the false entries to show compliance with the requirements for the certificate he was seeking. We explained that, when determining materiality we must,

look at the intentionally false entry in the logbook as it relates to the certification framework generally, not just in connection with the application which gave rise to the alleged violation. Viewed in this broader light, any logbook entry which in any way illustrates compliance with any certification or rating requirement found in 14 C.F.R. 61 is material for purposes of a section 61.59(a)(2) violation. [Footnote: For example, the falsified entries in question could be used to show compliance with Part 61 requirements beyond an application for an ATP certificate, such as recency of experience.] The maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability and accuracy of the records and documents maintained and presented to demonstrate compliance.

Id. at 557.

We conclude that, while perhaps not pertinent to the FAA's

decision on the flight engineer applications themselves,¹³ respondent's false use of his father's social security number on those applications -- in conjunction with his indication on those applications that he was the holder of a commercial pilot certificate -- was material in that it concealed respondent's fraudulent possession of his father's pilot certificate. In other words, respondent's false use of his father's social security number was equivalent to a false statement that he held a commercial pilot certificate, which could clearly be used to show compliance with the requirements for higher certificates such as an airline transport pilot certificate. In sum, we agree with Judge Mullins that respondent's false statements of his social security number were material, and we uphold his revocation of all airman certificates held by respondent.

We turn now to the denial action, wherein respondent sought reissuance of his claimed commercial pilot certificate. Although our affirmance of the revocation action effectively renders the issues in the denial action moot, we nonetheless note our agreement with Judge Geraghty's grant of summary judgment for the Administrator in that case. As discussed above, the Administrator submitted evidence showing that respondent was never issued a pilot certificate in his own right. As respondent presented nothing in rebuttal, Judge Geraghty properly granted

¹³ We note, however, that respondent's earlier use of a social security number which did not match the one shown on his pilot certificate was apparently material to the treatment of that application, in that it apparently caused the FAA to bar him from proceeding with the flight engineer test. (Tr. 94-95.)

summary judgment for the Administrator on that point.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeals are denied;
2. The initial decisions are affirmed; and
3. The revocation of respondent's flight engineer certificate and commercial pilot certificate¹⁴ shall commence 30 days after the service of this opinion and order.¹⁵

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

¹⁴ Nothing in this decision should be read to suggest that respondent was ever entitled to hold, or to exercise the privileges of, the commercial pilot certificate erroneously issued to him.

¹⁵ For the purpose of this opinion and order, respondent must physically surrender any airman certificates he still holds to an appropriate representative of the FAA pursuant to FAR § 61.19(f).